IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. III

Excise Appeal No. 40433 of 2023

(Arising out of Order-in-Appeal No. 204/2023 dated 11.05.2023 passed by Commissioner of Central Excise & Service Tax, (Appeals II), Newry Towers 2nd Floor, No. 2054/I, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Technico Laboratory Glass Works **...Appellant**
(Proprietrix Mrs. Savithri Arun deceased),
No. 263, SIDCO Industrial Estate, 7th Main Road,
Thirumudivakkam,
Chennai - 600 044.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai Outer Commissionerate,
Newry Towers, Anna Nagar,
Chennai – 600 040

APPEARANCE:
For the Appellant : Ms. Vardini Karthik, Advocate
For the Respondent : Ms. Harendra Singh Pal, Assistant Commissioner / A.R

CORAM:
HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING / DECISION : 19.10.2023

FINAL ORDER No. 40941 / 2023

Order : Per Ms. SULEKHA BEEVI C.S.

The Ld. counsel appearing for the appellant Ms. Vardini Karthik submitted that the appellant is a proprietorship firm and the proprietrix Mrs. Savithri Arun passed away on 06.09.2022. Even though the said fact was brought to the notice of the Commissioner (Appeals), the same was not taken into account and the impugned order was passed against the dead person. The Ld. counsel relied upon the decision in case of *Shabina Abraham Vs. Collector of Central Excise and Customs [2015 (322) ELT 372 (SC)]* to argue that the appeal having been abated ought to have been dismissed by the Commissioner (Appeals).

2. The Ld. Authorised Representative Shri Harendra Singh Pal appeared for the Department and reiterated the findings in the impugned order.

3. Heard both sides.

4. We take note of the fact that the appellant proprietrix of firm has passed away on 06.09.2022 much before issuance of the impugned order. Applying the decision in the case of Shabina Abraham *(supra)*, we are of the considered opinion that the appeal is abated. The relevant paragraph of Apex Court decision reads as under:-

> ***"5.*** *Shri Rajshekhar Rao, learned counsel appearing for the legal heirs made submissions before us with great clarity and persuasiveness. He submitted that a reading of Sections 2(f), (3), Section 4(3)(a), Section 11 and 11A as they stood at the relevant time would show that unlike the provisions of the Income Tax Act, there is no machinery provision in the Central Excises and Salt Act for continuing assessment proceedings against a dead individual. He stressed the fact that an assessee under the said Act means "the person" who is liable to pay the duty of excise under this Act and further stressed the fact that in cases of short-levy, such duty can only be recovered from a person who is chargeable with the duty that has been short-levied. He further invited our attention to the Central Excise Rules and Rules 2(3) and 7 in particular to buttress his submission that there is no machinery provision contained either in the Act or in the Rules to proceed against a dead person's legal heirs. He cited certain judgments before us which we will advert to later on in this judgment.*
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> ***33.*** *This Court has, in a plethora of judgments, referred to the aforesaid principles. Suffice it to quote from one of such judgments of this Court in Commissioner of Sales Tax, Uttar Pradesh v. Modi Sugar Mills, 1961 (2) SCR 189 at 198 :-*
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> > *"In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and*

> *interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency."*

5. Following the same, we hold that the appeal having been abated is dismissed accordingly.

(Order dictated in court)

Sd/-

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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